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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1991

Addendum

MALTA

[27 December 1995]

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I. GENERAL

1. According to subsection (1) of article 1 of the Constitution of Malta, "Malta is a democratic republic founded on work and in respect for the fundamental rights and freedoms of the individual".

2. The territory of Malta comprises the island of Malta (95 square miles), Gozo (26 square miles) and Comino (1 square mile). The archipelago lies in the centre of the Mediterranean Sea.

3. The total population in September 1993 was 365,600 persons of whom 180,700 males and 184,900 females. The largest town is Birkirkara with 21,000 persons.

4. The population is homogeneous in composition with a number of settlers mainly from the United Kingdom who have been given permanent residence permits. The age distribution is as follows:

Age	Percentage of population
0-14	23.6%
15-59	61.8%
60+	14.6%

5. Malta is a parliamentary democracy with Dr. Ugo Mifsud Bonnici as President and Dr. Edward Fenech Adami as Prime Minister. The last elections were held in February 1992, and constitutionally the next election has to be held within five years.

6. The main industries are tourism, production of textiles, machinery, food and beverages, and electronic equipment.

7. At birth, life expectancy for males is 74 years, while female life expectancy is 78 years.

8. For 1992, the infant mortality rate was 10.8. The infant mortality statistics in Malta include all neonatal deaths where birth rate was 500 g or more. This means that the statistics include more deaths than most countries which have a cut-off point for inclusion as being 100 g birth rates. The crude mortality is 5.6 per 1,000 and the crude birth rate is 10.1 per 1,000.

9. The religion of Malta is the Roman Catholic Apostolic Religion, while religious teaching of this faith is provided in all State schools as part of compulsory education (see art. 2 of the Constitution). There are various denominations on this island who are allowed the free exercise of their religion in accordance with article 40 of the Constitution.

10. In 1993 the Gross National Product was 612,300,000 Maltese liri, while per capita this amounted to approximately 2,000 Maltese liri.

11. The literacy rate is over 90 per cent, while the school leaving age is 16. The total number of students at the University of Malta is 4,886 of whom 2,480 are male and 2,406 and female.

12. The maternal mortality rate was 3.6 per 100,000 for the period 1988-1992, while the fertility rate is 68.4 per 100 persons.

13. The rate of inflation for 1993 was 4.14 per cent while unemployment at December 1993 was 4.5 per cent.

14. Malta acceded to the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 13 September 1990, and the Convention entered into force for Malta on 13 October 1990.

15. The Government of Malta made a declaration under articles 21 and 22 of the United Nations Convention recognizing the competence of the Committee established under article 17 of the Convention.

A. Constitution

16. According to article 6 of the Constitution of Malta, "if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void". Chapter IV of the Constitution of Malta defines the fundamental rights and freedoms of the individual.

17. Article 33 gives protection to the right to life, and reads as follows:

"33. Protection of Right to Life.

"(1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted.

"(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as in hereafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -

"(a) for the defence of any person from violence or for the defence of property;

"(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

"(c) for the purpose of suppressing a riot, insurrection or mutiny; or

"(d) in order to prevent the commission by that person of a criminal offence,

"or if he dies as a result of a lawful act of war."

18. The Constitution also guarantees the liberty and security of the individual. Section 34 states that -

"34. Protection from arbitrary Arrest or Detention.

"(1) No person shall be deprived of his personal liberty save as may be authorized by law in the following cases, that is to say -

"(a) in consequence of his unfitness to plead to a criminal charge;

"(b) in execution of the sentence or order of the court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;

"(c) in execution of the order of the court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;

"(d) in execution of the order of the court made to secure the fulfilment of any obligation imposed on him by law;

"(e) for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;

"(f) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

"(g) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;

"(h) for the purpose of preventing the spread of an infectious or contagious disease;

"(i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of his community; or

"(j) for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relative thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

"(2) Any person who is arrested or detained shall be informed, at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention:

"Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this subsection at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable.

"(3) Any person who is arrested or detained -

"(a) for the purpose of bringing him before a court in execution of an order of a court; or

"(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

"and who is not released, shall be brought not later than 48 hours before a court; and if any person arrested or detained in such a case as is mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceeding which may be brought against him, he shall be released either unconditionally or upon reasonable conditions including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

"(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person.

"(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the taking during such a period of public emergency as is referred to in paragraph (a) or (c) of section 47 of this Constitution of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

"(6) If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta.

"(7) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations."

This article has its counterpart in article 5 of the European Convention on Human Rights which has successfully been invoked in a case where the accused could not be granted bail because the penalty for the crime was life imprisonment. As a result the Criminal Code had to be amended in such a way

that it is now in the court's discretion, after taking certain factors into account, whether to grant bail or not (Dr. Lawrence Pullicino v. The Commissioner of Police).

19. Article 35 protects the individual from being compelled to do forced labour. The full Article reads as follows:

"35. Protection from Forced Labour.

"(1) No person shall be required to perform forced labour.

"(2) For the purposes of this section, the expression 'forced labour' does not include -

"(a) any labour required in consequence of the sentence or order of a court;

"(b) labour required of any person while he is lawfully detained by sentence or order of a court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare is reasonably required for that purpose;

"(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

"(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community."

The counterpart to this article is article 4, paragraph 2 of the European Convention on Human Rights as incorporated in Act XIV of 1987.

20. Article 36 of the Constitution protects the individual from any inhuman or degrading punishment or treatment.

"36. Protection from Inhuman Treatment.

"(1) No person shall be subjected to inhuman or degrading punishment or treatment.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.

"(3)(a) No law shall provide for the imposition of collective punishments.

"(b) Nothing in this subsection shall preclude the imposition of collective punishments upon members of a disciplined force in accordance with the law regulating the discipline of that force."

This article reproduces article 3 of the European Convention on Human Rights.

B. International treaties

21. In Malta the ratification of treaties is governed by the relevant provisions of the Ratification of Treaties Act (Chapter 304 of the Laws of Malta), [available for consultation in the files of the secretariat]. There is no provision in the Constitution of Malta which gives precedence to international law. In regard to the United Nations Convention in particular, it was felt that certain articles required ad hoc legislation while others are covered by existing legislation.

C. Conventions ratified

22. Malta has ratified a number of Conventions in connection with the protection of human rights. These are:

(a) International Covenant on Economic, Social and Cultural Rights;

(b) International Covenant on Civil and Political Rights;

(c) Optional Protocol to the International Covenant on Civil and Political Rights;

(d) Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;

(e) International Convention on the Elimination of All Forms of Racial Discrimination;

(f) Convention on the Rights of the Child;

(g) Convention on the Elimination of All Forms of Discrimination against Women;

(h) Convention on the Political Rights of Women;

(i) Convention on the Nationality of Married Women;

(j) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(k) Slavery Convention of 1926;

(l) 1953 Protocol amending the 1926 Slavery Convention;

(m) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

(n) Convention relating to the Status of Refugees;

(o) Protocol relating to the Status of Refugees;

(p) European Convention for the Protection of Human Rights and Fundamental Freedoms;

(q) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(r) Sixth Protocol of the European Convention on Human Rights.

23. In 1987, Malta made a declaration recognizing the competence of the European Commission on Human Rights to deal with applications under article 25 of the European Convention on Human Rights. In 1990, Malta recognized the competence of the United Nations Committee on Human Rights to receive and consider applications by individuals under article 28 of the Covenant on Civil and Political Rights.

D. Competent authorities and remedies

24. A criminal action against any person accused of the crime of torture within the meaning of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is prosecuted in the name of the Republic of Malta through the Executive Police or the Attorney General, as the case may be, according to law. The Court of Magistrates (Malta), and the Court of Magistrates (Gozo), and the Criminal Court are the competent courts. In the Criminal Court, the accused my opt for trial by jury or for a trial without empanelling a jury. According to section 538 of the Criminal Code, every person who feels himself aggrieved by any offence and desires to lodge a complaint for the punishment of the offender may send such complaint to any police officer, even by letter. If a person alleges that the provisions relating to inhuman or degrading punishment or treatment have been contravened, he may apply to the Civil Court, First Hall, for redress. This court has awarded financial compensation for real as well as for moral damages. This may be done without any prejudice to the filing of a case for damages in the Civil Court.

25. An inquiry can also be conducted for the examination of the behaviour of any public officer according to the provisions of the Inquiries Act (chap. 273). The Board of Inquiry can carry an investigation into any of the following matters:

(a) The conduct of public officers, or of officers or servants of a statutory body, or of any one or more of such public officers or servants;

(b) Any matter falling within the functions or responsibility of any such department or body, or otherwise concerning or affecting a service of the Government.

The report of the Inquiry Board is sent to the Public Service Commission, established under chapter X of the Constitution of Malta. According to section 110 (1), the Prime Minister acts on the recommendation of the Public Service Commission in matters of disciplinary control.

E. Punishments

26. According to section 39 of the Constitution, every person charged with an offence shall be presumed innocent until proved guilty.

27. The punishments that may be awarded for crimes are the following:

(a) Imprisonment;

(b) Solitary confinement;

(c) Interdiction;

(d) Fine (multa).

28. According to section 9 of the Criminal Code:

"(1) The punishment of solitary confinement is carried into effect by keeping the person sentenced to imprisonment, during one or more terms in the course of any such imprisonment, continuously shut up in the appointed place within the prison, without permitting any other person, not employed on duty nor specially authorized by the Government, to have access to him.

"(2) No term of solitary confinement shall exceed ten continuous days.

"(3) More terms of solitary confinement may only be applied with an interval of two months between one term and another.

"(4) Nevertheless, solitary confinement may be applied during those intervals in case of any infringement of the prison regulations, or for any other offence committed during the said intervals, provided that the terms be of short duration and that they shall not together exceed fifteen days in any one interval.

"(5) Where the law prescribes the punishment of solitary confinement and does not specify the particular number of terms, it shall not be lawful to inflict more than twelve terms of solitary confinement.

"(6) The punishment of solitary confinement is applied in the cases prescribed by law."

29. The death penalty was abolished in 1971 and may now be awarded in very limited circumstances against persons serving in the armed forces during wartime. Malta is, in fact, a contracting party to the Sixth Protocol to the European Convention for Human Rights. Malta has also acceded to the

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In Malta, the death penalty was last carried out in 1944.

30. Corporal punishment in schools is neither tolerated nor practised. The authorities have not received any reports or complaints about the infliction of any corporal punishment in any school.

F. Attorney General

31. According to section 91 of the Constitution, the Attorney General is not subject to the control of any person or authority "... in the exercise of his powers to institute, undertake or discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorize him to exercise that power in his individual judgement." The Attorney General enjoys security of tenure and cannot be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two thirds of all the members thereof and requesting such removal on the ground of proven inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proven misbehaviour.

G. Prison regulations

32. Recently, the prison regulations have been updated and brought into line with standards acceptable at the European level. The aim of the new regulations is to instil in prisoners a sense of discipline and responsibility and to reform their character. The deprivation of liberty shall not be aggravated except as required for justifiable segregation or the maintenance of security, good order or discipline.

33. The rules provide for high standards of hygiene in the preparation of food, a proper medical service, religious and moral assistance, and the education of persons serving a prison sentence. According to section 77 of the new regulations the punishments that the Director of Prisons can impose for breaches of discipline are:

(a) Caution;

(b) Forfeiture or postponement for any period of any of the privileges under regulation 13;

(c) Exclusion from associated work for a period not exceeding 56 days;

(d) Assignment or reassignment of work for a period not exceeding 56 days;

(e) Stoppage of earnings, including any allowance, referred to in paragraph (6) of regulation 29 and paragraph (1) of regulation 30, for a period not exceeding 56 days;

(f) Cellular confinement not exceeding 30 days;

(g) Forfeiture of not more than 100 days of remission, whether earned or prospective, referred to in regulation 14 except in the case of a prisoner found guilty of wilful homicide, or attempted wilful homicide, or mutiny, or incitement to mutiny, or escape or attempted escape from prison, or assault on any person resulting in grievous bodily harm, and/or possession of and/or trafficking in narcotic drugs, in which case the forfeiture may be of not more than 365 days;

(h) In the case of a prisoner otherwise entitled to them, forfeiture for any period of the right, under paragraph (1) of regulation 8, to have the articles there mentioned;

(i) In the case of a prisoner guilty of escaping or attempting to escape and who is otherwise entitled to it, forfeiture of the right to wear his own clothing under paragraph (2) of regulation 22.

34. Regulation 84 prohibits inhuman punishments or treatment:

> "Collective punishments, corporal punishments, punishment by leaving in a dark or unventilated cell or in a cell which is not within hearing range of human sound or in which the prisoner is exposed to unreasonable degrees of temperature, noise or light and all those forms of cruel, inhuman or degrading punishment or treatment shall be completely prohibited."

35. The prisoner is also entitled to make any complaints to the Prison Board with regard to treatment in prison and neither a Director nor any other prison officer shall be present before the Board to which the prisoner is making the complaint. The Board has the duty to arrange for the food of the prisoners to be inspected by a member of the Board at frequent intervals. It shall also inquire into any report made to it that a prisoner's health has been or is likely to be injuriously affected by any conditions of his imprisonment.

H. The 48-hour rule

36. According to section 34 (3) (g) of the Constitution of Malta:

> "(3) Any person who is arrested or detained -
>
> "(a) for the purpose of bringing him before a court in execution of an order of a court; or
>
> "(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,
>
> "and who is not released, shall be brought not later than forty-eight hours before a court;"

37. Though so far the arrested person has no right of immediate access to a lawyer, the normal practice is to ask the arrested person whether he would like to get in touch with a lawyer of his choice. Obviously, this contact has to be established before the 48 hours have elapsed.

I. Confessions

38. According to section 658 of the Criminal Code:

> "Any confession made by the person charged or accused, whether in writing or orally, may be received in evidence against the person who made it, provided it appears that such confession was made voluntarily, and not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour".

In practice, the person under arrest is warned that whatever he confesses may be used as evidence against him and that he is not entitled to any mitigation of punishment for making a voluntary confession.

39. The defences laid down in the law are: minority, insanity, intoxication, self-defence, coercion, mistake of fact. Hence, it is no defence to plead superior orders.

40. Criminal proceedings may be initiated before the Court of Magistrates (Malta), or the Court of Magistrates (Gozo). A case may also be brought before the Criminal Court. Here a verdict is delivered after a trial by jury (where a 6-3 majority has to be recorded). The accused may opt to be tried in the Criminal Court by a judge sitting without a jury. For punishments carrying a prison term of up to six months, the competent court is the Court of Magistrates. For punishments varying between 6 months and 10 years, the Attorney General has the option (as long as the accused concurs) to take the case tried by the Court of Magistrates rather than by the Criminal Court (sect. 139 A carries a minimum punishment of five years and a maximum of nine years).

J. Appointment of judges and magistrates

41. According to sections 96 (1) and 100 (1) of the Constitution of Malta, judges of the superior courts and magistrates of the inferior courts shall be appointed by the President acting in accordance with the advice of the Prime Minister. Like the Attorney General (see para. 28), judges and ministers cannot be removed from office except by the President (sect. 97 (2) of the Constitution).

42. Some judgements regarding allegations of cruel and inhuman treatment have been delivered by the Maltese courts:

(a) Tonio Vella v. The Commissioner of Police (Constitutional Court 5 April 1991). The events took place on 2 December 1983. The question regarding compensation was settled at LM 2,000;

(b) Joseph Mary Vella, George Vella and Francis Vella v. The Commissioner of Police et noe. (Constitutional Court 23 January 1993). The events of this case are connected with the facts mentioned under (a) above;

(c) On 10 March 1993, an ex-Commissioner of Police was found guilty of complicity in causing serious bodily harm followed by death to a person who was at that time being investigated by the police at police headquarters. The

events took place on 28 July 1980. The Court of Appeal confirmed the judgement on May 1993;

(d) In February 1994 the Constitutional Court declared that the conditions in the lock-up cell of a prison station were such as to amount to degrading and inhuman treatment. An application for a retrial of this case has now been filed (Joseph Azzopardi v. The Commissioner of Police).

43. Nobody has so far been charged with a crime following under section 139 A of the Criminal Code (i.e. the section which makes torture a crime).

44. It is interesting to note that the Maltese courts have extended the notion of inhuman treatment several times. In 1976 it was decided that the requisition of a residence by the Housing Department amounted to inhuman treatment, while in 1987 the courts also ruled that dismissal from employment for one day's absence from work following a political directive also amounted to inhuman treatment.

II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE CONVENTION

A. Articles 1 and 2

45. Torture is prohibited by article 36 of the Constitution: "No person shall be subjected to inhuman or degrading punishment or treatment." However, to meet the requirements of the Convention, a new article, article 139 A of the Criminal Code, was introduced by Act XXIX of 1990. The provision reproduces the wording of article 1 of the Convention and, on conviction, a person may be sentenced to a term of imprisonment ranging from five to nine years. The article reads as follows:

> "139 A. Any public officer or servant or any other person acting in an official capacity who intentionally inflicts on a person severe pain or suffering, whether physical or mental -
>
> "(a) for the purpose of obtaining from him or a third person information or a confession; or
>
> "(b) for the purpose of punishing him for an act he or a third person has committed or is suspected of having committed; or
>
> "(c) for the purpose of intimidating him or a third person or of coercing him or a third person to do, or to omit to do, any act; or
>
> "(d) for any reason based on discrimination of any kind,
>
> "shall, on conviction, be liable to imprisonment for a term from five to nine years:
>
> "Provided that no offence is committed where pain or suffering arises only from, or is inherent in or incidental to, lawful sanctions or measures:

"Provided further that nothing in this section shall affect the applicability of other provisions of this code or of any other law providing for a higher punishment."

46. This provision applies at all times as no exception (e.g. war, or an order from a superior officer) has been included. Nor do these exceptions fall within the limits of sections 223 and 224, which deal with justifiable homicide or bodily harm and cases of lawful defence, or within sections 227 to 238, which provide for excuses for the crimes under Title VIII of the Criminal Code (Crimes against the person). Legal inquiries are carried out when allegations of ill-treatment are made. The United States Senate Committee reporting on the situation of human rights in Malta for 1992 had this to say: "A legal inquiry into a case, pending since 1991, of alleged mistreatment of a foreigner imprisoned for drug smuggling cleared the prison authorities of any deliberate wrongdoing."

47. Malta has not proclaimed a state of emergency since 1964. In any case, the right of the individual not to be treated in an inhuman or degrading manner is specifically provided by section 47 of the Constitution of Malta:

"(2) In this Chapter 'period of public emergency' means any period during which -

"(a) Malta is engaged in any war; or

"(b) there is in force a proclamation by the President declaring that a state of public emergency exists; or

"(c) there is in force a resolution by the House of Representatives supported by the votes of not less than two-thirds of all the Members of the House declaring that democratic institutions in Malta are threatened by subversion"

"(5) In relation to any person who is a member of a disciplined force raised under any law in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any provisions of this Chapter other than sections 33, 35 and 36."

This protection is also given by article 15 of the European Convention on Human Rights and under article 4 of the International Covenant on Civil and Political Rights.

48. Persons sentenced to imprisonment and other persons deprived temporarily of their liberty awaiting trial are detained in prisons which are run under strict rules and regulations. Where a prisoner is charged with an offence against discipline, he has the right to be informed of the charge without delay and he is given a full opportunity of hearing what is alleged against him and of presenting his own case (Regulation 76). Moreover, according to Regulation 79:

"(1) Where the Director awards a punishment for any single offence which includes:

"(a) cellular confinement for a period exceeding six (6) days;

"(b) forfeiture of more than twenty-eight (28) days of remission referred to in regulation 14;

"the prisoner may petition a review of the disciplinary case to the Appeals Tribunal by filing a notice of intention to appeal with the Tribunal within five days of imposition of the punishment.

"(2) Where a punishment described in paragraph (1) is imposed, the Director shall immediately inform:

"(a) the prisoner of his right to petition the Appeals Tribunal;

"(b) the Chairman of the Appeals Tribunal shall be informed of the name of the prisoner, the offence with which he was charged, and the punishment imposed.

"(3) Where a petition is made to the Appeals Tribunal under this regulation, the Chairman shall summon a special meeting of the Tribunal to be held within six (6) days from receipt of the notice of appeal:

"Provided that if the punishment includes cellular confinement, an appeal under this Regulation shall not stay the execution of the punishment ordered by the Director, during the first six (6) days.

"Provided, further, that if the punishment includes cellular confinement, the Chairman shall summon a special meeting of the Appeals Tribunal to be held within three (3) days.

"(4) The Appeals Tribunal shall inquire into the charge, the punishment imposed, and the grounds for the prisoner's appeal. The Appeals Tribunal shall be entitled to regulate its own proceedings.

"(5) The Chairman of the Appeals Tribunal shall notify the prisoner and the Director in writing of its decision within one (1) day of the hearing.

"(6) In cases of acquittal, or where the punishment of cellular confinement is reduced to less than six (6) days, the Tribunal shall have the power to order compensation in the form of remission or special privileges."

49. Regulation 103 lays down that one of the functions of the Prison Board is "to satisfy itself as to the treatment of prisoners the state of prison premises, and the administration of prisons". It is also the duty of the Prison Board to advise the Minister responsible for prisons about the care and rehabilitation of prisoners. The Director of Prisons may attend the meeting of the Board only if invited by the Board. (104 (4)) During visits to the prisons, the prisoners shall be asked if they have any complaints to make with regard to their treatment in the prison and any prisoner requesting to make such a complaint shall be heard in such part of the prison as the Board may deem fit. The Director and all prison officers are barred from such hearing.

The Board is also bound to inform the Minister of any abuse and can recommend disciplinary action against any prison officer. Prisoners are given special permission to attend weddings, funerals and other family events. They are normally helped to find employment when they have served their terms.

Detention in mental hospitals

50. Under the Mental Health Act (chap. 262), persons can only be detained in a mental hospital if an application, based on the written recommendations of two medical practitioners, is made. Each recommendation has to include a statement that the patient in question is suffering from a mental disorder of a nature or degree which warrants the detention of the patient and that it is necessary that he be so detained. Persons may thus only be removed if the Minister responsible for justice is satisfied, upon similar recommendations, of the mental state of the person in question. The Act also has a special provision which covers those instances where, in the course of any proceedings on the charge of a criminal offence, the question of the insanity of the accused arises. The relevant provision is as follows:

"42. (1) Where in the course of any proceedings on the charge of a criminal offence the question of the insanity of the accused, whether at the time of the offence or of the proceedings, arises, the court may, if it is of the opinion that it is necessary to do so, order that the accused be admitted to a hospital for observation, and may also give such other directions as may be appropriate.

"(2) Where an order is made as provided in subsection (1) of this section, the period of the detention of the accused shall be regulated by the court by which the order has been made, and such order shall be sufficient authority for the detention of the accused in hospital for the period allowed by the court.

"(3) For the purpose of this section, the expression 'criminal offence' includes a military offence under the Malta Armed Forces Act."

B. Article 3

51. A person who is going to be expelled, returned or extradited to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, may invoke the protection of article 3 of the European Convention on Human Rights or of article 36 of the Constitution, or both. This is possible because he may seek redress under these articles not only if he has already been a victim but also if one of the human rights provisions is "likely to be contravened in relation to him".

52. It will be recalled that in the Soering case the European Court of Human Rights examined the question whether the extradition of a fugitive to another State where he might be subjected or likely to be subjected to torture or to inhuman treatment or punishment would engage the responsibility of a contracting State under article 3 of the European Convention. The court held:

"That the abhorrence of torture has such implications is recognized in article 3 of the United Nations Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment, which provides that 'no State shall ... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture'. The fact that a specialized treaty should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of the European Convention. It would hardly be compatible with the underlying values of the Convention, that 'common heritage of political traditions, ideals, freedom and rule of law' to which the preamble refers, were a contracting State knowingly to surrender a fugitive to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of article 3, would plainly be contrary to the spirit and intendment of the article, and in the Court's view this inherent obligation not to extradite extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment prescribed by that article."

53. Maltese courts follow the case law by the Strasbourg organs and it is highly unlikely that they will ever ignore the principles established in the Soering case. Hence, any person who is going to be extradited to a country where he is likely to suffer torture may invoke article 3 of the European Convention on Human Rights and article 36 of the Constitution of Malta.

54. The Court of Magistrates sitting as a court of criminal inquiry decides whether there are grounds for the extradition of a person arrested for an extraditable offence. According to section 15 of the Extradition Act, it is possible for a person committed to custody to appeal to the Court of Criminal Appeal.

55. The same Act has two very important provisions in this respect:

"16. Where a person is committed to custody under section 15 of this Act, the Court shall, besides informing him that he will not be returned until the expiration of fifteen days from the date of its order of committal and that he may appeal to the Court of Criminal Appeal, also inform him that, if he thinks that any of the provisions of subsections (1) and (2) of section 10 of this Act has been contravened or that any provision of the Constitution of Malta is, has been or is likely to be contravened in relation to his person as to justify a reversal, annulment or modification of the court's order of committal, he has the right to apply for redress in accordance with the provisions of section 46 of the said Constitution."

"20. On an appeal made to the Court of Criminal Appeal or on an application for redress to the Constitutional Court under section 46 of the Constitution of Malta, either of the said courts may, without prejudice to any other jurisdiction, order the person to be discharged from custody if it appears to such court that -

"(a) by reason of the trivial nature of the offence of which he is accused or was convicted; or

"(b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

"(c) because the accusation against him is not made in good faith in the interest of justice,

"it would, having regard to all the circumstances, be unjust or oppressive to return him."

56. Undesirable immigrants are dealt with and considered individually and each case is decided by the Court of Magistrates (sect. 14 of the Immigration Act), but the Minister responsible for immigration may, if he deems it to be conducive to the public good, make a deportation order against any person.

57. No person can be discriminated against on the ground of race, place of origin, political opinions, colour, creed or sex, according to section 45 of the Constitution of Malta.

58. According to section 43 of the Constitution of Malta, "Extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law." It is, of course, possible for any person, whether he is about to be deported or to be removed, to file an application in the First Hall of the Civil Court for constitutional redress.

C. Article 4

59. As has already been stated, torture is now an offence under Maltese law. The Maltese Criminal Code regulates "attempt" and "complicity" in sections 41 to 48. The provisions apply to all crimes and, as can be seen from the text of the laws, the punishments are appropriate. In the case of attempts:

(a) If the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;

(b) If the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.

60. In the case of complicity section 43 provides: "Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal." No cases of attempts or complicity in connection with the crime contemplated under section 139 A have been reported so far.

D. Article 5

61. The section which establishes who can be prosecuted in Malta is section 5 of the Criminal Code. This section states that a criminal action may be prosecuted in Malta:

> "(1) (a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;
>
> "(b) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;
>
> "(c) against any person who commits an offence on board any aircraft while it is within the airspace of Malta or on board any aircraft belonging to Malta wherever it may be;
>
> "For the purposes of this paragraph the expression 'air space' means the air space above the land areas and territorial waters of Malta;
>
> "(d) without prejudice to the preceding paragraphs of this subsection, against any citizen of Malta or permanent resident in Malta who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty of an offence against the safety of the Government or of the offences mentioned in sections 133, 139 A or of forgery of any of the Government debentures referred to in section 166 or of any of the documents referred to in section 167, or of the offence mentioned in section 196 of this Code, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta;
>
> "For the purposes of this paragraph the expression 'permanent resident' means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in section 7 of the Immigration Act, 1970:
>
> "(e) against any person who, being in Malta, shall be a principal or an accomplice in any of the crimes referred to in sections 139 A and 298, although the crime shall have been committed outside Malta:
>
> "Provided that no criminal action shall be prosecuted against the President of Malta in respect of Acts done in the exercise of the functions of his office.
>
> "(2) For the purposes of paragraphs (b) and (c) of subsection (1) of this section, a ship or vessel or an aircraft shall be deemed to belong to Malta if it is registered in Malta or, if it is not registered anywhere, is owned wholly by persons habitually resident in Malta or by bodies corporate established under and subject to the laws of Malta and having their principal place of business in Malta"

This section was amended to extend jurisdiction to make it possible to prosecute persons who committed the crime referred to in section 139 A (torture). This means that as long as a person is physically present in

Malta, if he has committed torture, he is subject to the jurisdiction of the Maltese courts even if the crime was committed outside Malta. Maltese courts have not had to deal with such cases so far.

E. Article 6

62. Section 347 of the Criminal Code regulates the power of arrest of the Executive Police. This section empowers the police to arrest any person who has committed, or is suspected of having committed, any crime punishable with imprisonment, with the exception of crimes under the Press Act, 1974. On the other hand, the Extradition Act regulates arrest for the purpose of committal, proceedings for committal, custody, and the right of a person committed to custody to appeal from an order committing a person to custody under section 15 of the said Act. The relevant sections read as follows:

"14 (1) A warrant for the arrest of a person accused of an extraditable offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued by a magistrate of judicial police.

"(a) on the receipt of an authority to proceed; or

"(b) without such authority, upon information that the said person is, or is believed to be, in or on his way to Malta,

"any warrant issued by virtue of paragraph (b) of this subsection is in this Act referred to as a provisional warrant.

"(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the Magistrate, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding arrest or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence within the jurisdiction of the courts of criminal justice of Malta.

"(3) Where a provisional warrant is issued under this section, the magistrate by whom it is issued shall forthwith give notice to the Minister, and transmit to him the information and evidence, of certified copies of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

"(4) A warrant issued under this section shall be forthwith executed by a Police officer."

"(2) Such person shall be deemed to be in legal custody from the moment that he is so remanded or committed until he is beyond the jurisdiction of the courts of criminal jurisdiction of Malta.

"18. (1) An appeal from an order committing a person to custody under section 15 of this Act shall be made by an application to the Court of Criminal Appeal, containing a demand for the reversal of the court's

order, and shall be filed in the registry of the court of committal not later than four working days from the date of the said order.

"(2) The registrar of the court of committal shall, not later than the first next working day, transmit the application together with the records of the case, the Registrar of the Court of Criminal Appeal, who shall without delay, forward a copy of the application to the Attorney General.

"(3) Notice of the day fixed for the hearing of the appeal shall be given by the Registrar of the Court of Criminal Appeal to the appellant and to the Attorney General:

"Provided that, except with the consent of both the appellant and the Attorney General, such hearing shall not take place before the lapse of two working days after the said notice has been given.

"(4) If the Court of Criminal Appeal reverses the decision of the Court of Judicial Police, the Court shall order that the appellant be discharged."

No cases have been reported so far.

F. Article 7

63. As to the fair treatment required by paragraph 3 of this article, reference is made to article 6 of the European Convention on Human Rights and to article 39 of the Constitution of Malta. The latter is reproduced for ease of reference.

"39. Provisions to secure protection of law.

"(1) Whenever a person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

"(2) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

"(3) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any adjudicating authority, including the announcement of the decision of the court, shall be held in public.

"(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from

excluding from the proceedings persons other than the parties thereto and their legal representatives -

"(a) in proceedings before a court of voluntary jurisdiction and other proceedings which, in the practice of the courts in Malta are, or are of the same nature as those which are, disposed of in chambers;

"(b) in proceedings under any law relating to income tax; or

"(c) to such extent as the court or other authority -

"(i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

"(ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality or decency, the welfare of persons under the age of eighteen years or the protection of persons concerned in the proceedings.

"(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

"Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

"(6) Every person who is charged with a criminal offence -

"(a) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;

"(b) shall be given adequate time and facilities for the preparation of his defence;

"(c) shall be permitted to defend himself in person or by a legal representative and a person who cannot afford to pay for such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense;

"(d) shall be afforded facilities to examine in person or by his legal representatives the witness called by the prosecution before any court and to obtain the attendance of witnesses subject to the payment of their reasonable expenses, and to carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

"(e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court ordered him to be removed and the trial to proceed in his absence.

"(7) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

"(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

"(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the court of appeal or review proceeding relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

"Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorizes any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so however that any court so trying such a member and convicting him to any punishment take into account any punishment awarded him under that disciplinary law.

"(10) No person who is tried for a criminal offence shall be compelled to give evidence at his trial.

"(11) In this section 'legal representative' means a person entitled to practice in Malta as an advocate or, except in relation to proceedings before a court where a legal procurator has no right of audience, a legal procurator."

64. The Code of Criminal Procedure also has enough safeguards to ensure a fair trial. In fact, most of the constitutional provisions have their counterparts in the Code of Criminal Procedure. For example, subsection 8 of section 39 of the Constitution is reflected in section 27 of the Criminal Code: "27. If the punishment provided by the law in force at the time of the trial is different from that provided by the law in force at the time when the offence was committed, the less severe kind of punishment shall be awarded". On the other hand, subsection 9 of section 39 of the Constitution has its counterpart in section 527 of the Criminal Code: "Where in a trial, judgement is given acquitting the person charged or accused, it shall not be lawful to subject such person to another trial for the same fact".

65. Finally, according to section 4 of the Criminal Code:

"(1) The criminal action is essentially a public action and is vested in the Government by whom it is prosecuted in the name of the Republic of Malta, through the executive Police or the Attorney General, as the case may be, according to law.

"(2) A criminal action is prosecuted ex officio in all cases where the complaint of the private party is not requisite to set the action in motion or where the law does not expressly leave the prosecution of the action to a private party."

G. Article 8

66. On becoming independent Malta succeeded to all the treaty obligations which the United Kingdom had undertaken and extended to Malta prior to 1964 (Treaty Series No. 5). According to section 30 of the Extradition Act (chap. 276):

"Any arrangement with a foreign State applicable to Malta under the provisions of the Acts of Parliament of the United Kingdom entitled the Extradition Acts 1870 to 1932 on the day immediately preceding the date of the commencement of this Act, shall, subject to the other provisions of this Act, continue so to apply until it is revoked."

67. The Extradition Act came into force in 1982. In Part II, the act deals with the return of offenders to Commonwealth countries and has a list of extradition offences appended as a schedule. The offence must be one which, however described in the law of the requesting country, falls within any of the descriptions set out in the schedule. The crimes of wilful homicide, involuntary homicide, wilful grievous bodily harm and assault, as well as actual bodily harm are included. According to section 216 of the Criminal Code a bodily harm is deemed to be grievous and is punishable with imprisonment for a term from three months to three years if it can give rise to danger of (a) loss of life; or (b) any permanent debility of the health or permanent functional debility of any organ of the body; or (c) any permanent default in the physical structure of the body; or (d) any permanent mental infirmity; (e) if it causes any deformity or disfigurement in the face, neck or either of the hands of the person injured; (f) if it causes any mental or physical infirmity lasting for a period of 30 days or more, or if the party injured is incapacitated for life from attending to his occupation. As torture may constitute one of the listed extraditable offences (where the list appears), any amendment of the law to make the offence of torture as defined in section 139 A of the Criminal Code a specific extraditable offence was not necessary. By Legal Notice of 1982, the Minister responsible for justice designated the following countries for the purposes of section 4 of the Extradition Act: Australia, Barbados, Canada, Cyprus, Gambia, Jamaica, New Zealand, Singapore, Trinidad and Tobago, and the United Kingdom of Great Britain and Northern Ireland. Under Part III of the Act, an offender may be returned to other foreign countries (not being a Commonwealth country) if it is an offence in respect of which a fugitive criminal may be returned to that country in accordance with the arrangement and is punishable under that law with imprisonment for a term of 12 months or to a greater punishment.

68. Finally, according to section 43 of the Constitution, "Extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law".

H. Article 9

69. The Government of Malta has always cooperated with other countries in matters of crime detection and in criminal proceedings. No special steps for cooperation need be taken for the offence of torture, which is considered a serious offence. So far the Government of Malta has not been asked for assistance in any case where torture has been practised. (Malta has also ratified the European Convention on Mutual Assistance in Criminal Matters (4 March 1994) but no State party to this treaty has asked for assistance in connection with torture cases.)

I. Article 10

70. At present the Police Academy is running special courses on human rights for recruits at all levels. Highly qualified persons are being invited to deliver the lectures and all recruits have to sit examinations on "The Police and Human Rights" and "Ethics". Prison officers are also warned against ill-treating prisoners while they would be liable to the punishment contemplated under the prison regulations if they assault a prisoner or use obscene, insulting or abusive languages towards him (Regulation 101 (3) (b)).

71. The social studies curriculum for secondary schools comprises a unit which deals with the Constitution, in particular with chapter IV (Fundamental Rights and Freedoms).

J. Article 11

72. The Prison Regulations according to which prisoners awaiting trial are treated with dignity and without any form of cruelty have recently come into force. The interrogation of suspects is carried out in accordance with the Commissioner's Rules. Any statement vitiated in any way by the use of force or any form of oppression is rejected by the courts if tendered as evidence (case Police v. Lydia Cauchi et al.) The manner of interrogation is included in the programme of the Police Academy while prospective doctors of medicine have special lectures in forensic medicine which enable them to identify any cruel treatment a person may have received.

73. The Prison Board is the authority which receives complaints and carries out inspections in prisons (Regulation 105). The police and the prison personnel are subject to the Public Service Commission established under the Constitution of Malta.

74. Regulation 101 of the Prison Regulations regulates the conduct of prison officers and clearly lays down the breaches of discipline which amount to offences.

K. Article 12

75. To avoid unnecessary duplication, reference is made to paragraphs 22 and 43 of this report.

L. Article 13

76. Anyone who alleges that he has been subjected to torture can file an application in the First Hall of the Civil Court and the court is by law required to set an early hearing for the case. He may also appeal to the Constitutional Court. Moreover, according to subsection 5 of section 8 of the Prisons Act (chap. 260), the Minister responsible for justice, the Chief Justice, the judges, the magistrates and the Attorney General are ex officio Special Visitors of the prisons and are empowered to have at any time access to the prisons and any of the prisoners therein. They can enter in the Official Visitors Book any remarks which they may deem proper in regard to the prisoners and the prison, and the book "shall be produced to the members of the Board of Visitors on their next visit to the prisons". Criminal proceedings may be taken if a person lodges a complaint that he has been tortured by a public official. If the official is not a police officer himself, the police would be considered as an impartial investigator and the proper authority for dealing with reports and the investigation of criminal offences. Finally, an Inquiry Board may be appointed to investigate any complaint regarding allegations of torture in accordance with sections 4 (i) and 3 (a) of the Inquiries Act, 1977 (chap. 273).

77. Moreover, according to section 19 (1) of the Malta Police Ordinance, "it shall be lawful for the Commissioner to hold an inquiry into any matter affecting the administration of the force". According to article 8 of the First Schedule of the Ordinance a member of the force commits an offence if he "uses any violence to a prisoner or any other person with whom he may be brought in contact in the execution of his duty". Among the punishments the Commissioner may award (sect. 20 of the same Ordinance) one finds dismissal or reduction in rank or seniority. If it is felt necessary to ensure impartiality, an inquiry may be held in accordance with section 3 of the Inquiries Act (chap. 273), where the conduct of any public officer may be examined (see para. 22 of this report). The Board set up under this Act may then pass the results of its inquiries to the Public Service Commission, which is an independent body set up under chapter 10 of the Constitution of Malta. Should the facts establish the elements of a criminal offence, then the Public Service Commission suspends its proceedings until the case is decided by the court.

M. Article 14

78. Compensation for any act of torture is possible under the Civil Code, under the Constitution of Malta and under Act XIV of 1987. In the event of the death of the victim, the heirs have the right to institute an action. These remedies are available to everyone. The remedy available under the constitutional provisions includes redress for moral damages as well.

N. Article 15

79. The relevant sections on confessions can be found in sections 658 to 661 of the Criminal Code. The courts have always rejected confessions taken under duress in accordance with section 658 of the Criminal Code:

> "658. Any confession made by the person charged or accused, whether in writing or orally, may be received in evidence against the person who made it, provided it appears that such confession was made voluntarily, and not extorted or obtained by means of threats or intimidation, or of any promotion or suggestion of favour."

Hearsay evidence is also inadmissible.

O. Article 16

80. There are two sections of the Criminal Code which are meant to control the violation of official duties. These are:

> "138. Any public officer or servant who shall maliciously, in violation of his duty, do or omit to do any act not provided for in the preceding sections of his Title, to the oppression or injury of any other person, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (multa):
>
> "Provided that the court may, in minor offences, award any of the punishments established for contraventions.
>
> "139. Where the injurious or oppressive act is one of those mentioned in sections 86, 87, 88 and 89, the offender shall, on conviction be liable to the punishment laid down in those sections respectively, increased by one degree."

81. For ease of reference, sections 86 to 88 are being reproduced hereunder:

> "86. Whosoever, without a lawful order from the competent authorities, and saving the cases where the law authorizes private citizens to apprehend offenders, arrest, detention or confinement, shall, on conviction, be liable to imprisonment for a term from seven months to two years.
>
> "Provided that the court may, in minor cases, award imprisonment for a term from one to three months or a fine (multa).
>
> "87. The punishment for the crime referred to in the preceding section shall be imprisonment for a term from thirteen months to three years in each of the following cases:
>
> "(a) if the detention or confinement continues for more than twenty days;

"(b) if the arrest is effected with the unauthorized use of a uniform, or under an assumed name, or under a warrant falsely purporting to be issued by a public authority;

"(c) if the individual arrested, detained or confined, is subjected to any bodily harm, or is threatened with death;

"(d) if the detention or confinement is continued by the offender notwithstanding his knowledge that a writ of warrant for the release of delivery of the person detained or confined has been issued by the competent authority;

"(e) if the crime is committed with the object of extorting money or effects, or of compelling any other person to agree to any transfer of property belonging to such person;

"(f) if the crime is committed for the purpose of forcing another person to do or omit an act, which, if voluntarily done or omitted would be a crime;

"(g) if the crime is committed as a means of compelling to do an act or to submit to treatment injurious to the modesty of her sex.

"88. Where the bodily harm referred to in paragraph (c) of the last preceding section is liable to a punishment higher than the punishment of imprisonment of two years, or is committed or accompanied with any kind of torture, the punishment shall be imprisonment for a term from four to six years."

82. The education of public officials covers not only torture but also other forms of ill-treatment even if they may be considered minor. The new prison regulations take into consideration all forms of ill-treatment. The authorities investigate any complaint whatever the form of ill-treatment while redress is always possible whether the ill-treatment is serious or not.

Other cruel, inhuman or degrading treatment

83. In the Criminal Code, the provisions of subtitle II of Title VIII, sections 214 to 220, would include other forms of cruel, inhuman or degrading treatment. The relevant sections (together with punishments which may be awarded) are reproduced below:

"Subtitle II

"Of Wilful Offences Against the Person

"214. Whosoever, without the intent to kill or put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.

"215. A bodily harm may be either grievous or slight.

"216. (1) A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from three months to three years:

"(a) if it can give rise to danger of:

"(i) loss of life; or

"(ii) any permanent debility of the health or permanent functional debility of any organ of the body; or

"(iii) any permanent defect in any part of the physical structure of the body; or

"(iv) any permanent mental infirmity;

"(b) if it causes any deformity or disfigurement in the face, neck or either of the hands of the person injured;

"(c) if it is caused by any wound which penetrates into one of the cavities of the body, without producing any of the effects mentioned in section 218;

"(d) if it causes any mental or physical infirmity lasting for a period of thirty days or more; or if the party injured is incapacitated, for a like period, from attending to his occupation;

"(e) if, being committed on a woman with child, it hastens delivery.

"(2) Where the person injured shall have recovered without ever having been, during the illness, in actual danger of life or of the effects mentioned in paragraph (a) of subsection (1) of this section, it shall be deemed that the harm could have given rise to such danger only where the danger was probable in view of the nature or the natural consequences of the harm.

"217. A grievous bodily harm is punishable with imprisonment for a term from five months to four years if it is committed with arms proper, or with a cutting or pointed instrument, or by means of any explosive, or any burning or corrosive fluid or substance;

"Provided that where the offence is committed by means of any explosive fluid or substance the minimum punishment shall be imprisonment for two years and the provisions of the Probation of Offenders Act, 1957, shall not be applicable.

"218. (1) A grievous bodily harm is punishable with imprisonment for a term from nine months to nine years:

"(a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any part of the physical structure of the body, or any permanent mental infirmity;

"(b) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;

"(c) if, being committed on a woman with child, it causes miscarriage.

"(2) Any debility of the health or any functional debility of any organ of the body, and any mental infirmity, serious disfigurement, or defect shall be deemed to be permanent even when it is probably so.

"(3) The punishment for the offences referred to in subsection (10) of this section shall be that established in subsection (2) of section 312 if the bodily harm is committed by means of any explosive fluid or substance.

"219. The punishments laid down in sections 216 and 218 shall be decreased by one or two degrees if a supervening accidental cause has contributed to produce the effects mentioned in the said sections.

"220. (1) Whosoever shall be guilty of a grievous bodily harm from which death shall ensue as a result of the nature of the natural consequences of the harm and not of any supervening accidental cause, shall be liable:

"(a) to imprisonment for a term from six to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime;

"(b) to imprisonment for a term from four to twelve years, if death shall ensue after the said forty days, but within one year to be reckoned as above.

"(2) If death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the harm, the offender shall, on conviction, be liable to imprisonment for a term from three to nine years.

"(3) If the bodily harm is inflicted within the limits of the territorial jurisdiction of Malta, the crime shall be held to have been completed within those limits, even if the death of the person injured shall occur outside those limits."

84. The Government of Malta is very sensitive about human rights issues in general and this is why it has striven hard to implement the provisions of the conventions it has ratified. The Maltese Government tries to follow not only the letter of these provisions, but also the spirit which animates such undertakings. This is why it keeps the state of human rights under constant review and, at present, it is contemplating the incorporation of other human rights provisions in its legislation.

List of annexes*

1. Constitution of Malta, 1992

2. Extradition Act

3. Inquiries Act

4. Section 139 (A) of the Criminal Code

5. Prison regulations, 1995

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* These annexes are available for consultation in the files of the United Nations Centre for Human Rights.